

Opinion No. 62-107

August 8, 1962

BY: OPINION OF EARL E. HARTLEY, Attorney General Oliver E Payne, Assistant Attorney General

TO: Honorable H. Vearle Payne, District Judge ____, Sixth Judicial District, Lordsburg, New Mexico

QUESTION

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May a juvenile be taken into custody when a police officer or probation officer believes that the juvenile's surroundings are such as to endanger his (the juvenile's) welfare?

CONCLUSION

Yes.

OPINION

ANALYSIS

Like adults, juveniles may be arrested upon a proper warrant or court order signed by the juvenile judge. In addition, the Juvenile Code (Section 13-8-19 et seq., N.M.S.A., 1953 Compilation (P.S.) establishes a procedure whereby a juvenile may be taken into custody without a warrant or court order.

Section 13-8-42, N.M.S.A., 1953 Compilation (P.S.) provides that:

"When any juvenile found violating any law or ordinance, **or whose surroundings are such as to endanger his welfare**, is taken into custody, such taking into custody shall not be termed an arrest." (Emphasis added)

In our opinion the phrase "whose surroundings are such as to endanger his welfare" should be broadly construed in order to effectuate the purposes of the Juvenile Code.

This viewpoint is ably expressed in Monrad G. Paulsen's article entitled "Fairness to the Juvenile Offender," 41 Minn. L. Rev. 547, a portion of which reads as follows:

"A policeman should be able to detain a child if he has reasonable grounds to believe that the child is delinquent . . . If a policeman without a warrant is powerless unless he finds the child violating a law, the restriction is unrealistic. He may possess information short of personal knowledge of a law violation (indeed the knowledge may be [of] an act

not illegal according to the criminal law at all) which strongly supports a belief that a child is delinquent. **In such cases, for the benefit of the child**, an officer should be able to act. If the youngster, after being taken into custody, is treated in accordance with the provisions of the Juvenile Court Acts, his rights are adequately protected."
(Emphasis added)

You give the following specific illustration. A twenty-year old boy with an automobile is stopped and cannot prove ownership of the automobile. With him are juvenile girls, presumably from another state. It is certainly our view that the juvenile girls could be detained on the ground that their surroundings are such as to endanger their welfare. Otherwise, as you point out, if the officer must first obtain a court order from you, the juveniles would easily be able to flee the jurisdiction.

This opinion should be considered as supplemental to Opinion No. 62-32 dealing generally with this subject.